U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32125202

Date: SEP. 03, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a research scientist, seeks classification as an individual of extraordinary ability in the sciences. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the classification's initial evidentiary requirements. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

In her initial filing, the Petitioner asserted that she has a major, internationally recognized award qualifying as a one-time achievement under 8 C.F.R. § 204.5(h)(3). The Director concluded that the record did not support this assertion, and the Petitioner has not challenged this conclusion on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). As such, the Petitioner must establish that she meets at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director concluded that the Petitioner meets the two criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), for acting as a judge of the work of others in her field and for publishing scholarly articles in her field. The record supports this conclusion. The Director also determined that the Petitioner did not submit sufficient evidence to establish her receipt of lesser nationally or internationally recognized prizes or awards in her field, membership in associations in her field which require outstanding achievements of their members, her original scientific contributions of major significance to her field, or performing in a leading or critical role for organizations with distinguished reputations. 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), and (viii). As the Petitioner did not meet at least three criteria, the Director did not conduct a final merits determination. *Kazarian*, 596 F.3d 1115, 1119-20.

On appeal, the Petitioner asserts that the Director's decision is in error because it attributes one of her awards to the wrong organization and because she does meet at least three of the initial evidentiary criteria. She also resubmits evidence from her underlying petition as well as new documentation addressing her eligibility. Upon a careful review of the record, we conclude that the Petitioner has not overcome the Director's grounds of denial.[1]

A. Receipt of Lesser Nationally or Internationally Recognized Prizes or Awards for Excellence in the Field of Endeavor. 8 C.F.R. § 204.5(h)(3)(i).

To establish her eligibility for the criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner submitted materials regarding her third-level, sixth place Excellent Achievements in Science and Technology

[1] While our decision may not reference every document submitted, we have reviewed each one.

award from the [redacted][2] and her second level Progress Award from the [redacted], presented by the [redacted] The Director concluded that the record did not establish the significance of these awards or the criteria used to grant them. On appeal, the Petitioner submits new documentation including the rules and criteria governing the awards and contends that since they are awarded by the Chinese government and by national organizations, respectively, they are "nationally recognized," as required by regulation.

First, we will not consider evidence submitted for the first time on appeal where the Petitioner was previously put on notice and given a reasonable opportunity to provide that evidence. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). The Director's notice of intent to deny (NOID) stated that the Petitioner could submit several forms of evidence for this criterion, including documentation of her awards' significance and the criteria used to award them, but the Petitioner did not submit these in her NOID response. As such, we will not consider the new award documentation provided on appeal.[3]

Furthermore, contrary to the Petitioner's assertions, an award is not considered nationally or internationally recognized for purposes of 8 C.F.R. § 204.5(h)(3)(i) simply because it is awarded by a national or international-level organization. To establish eligibility, we consider factors such as the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, the number of awardees or prize recipients, and limitations on competitors.[4] As noted, the Petitioner previously did not provide any documentation indicating whether her awards are nationally or internationally recognized beyond the awarding institutions. While she does provide one magazine article on appeal, as well as information regarding the awards criteria, we decline to consider this evidence for the reasons explained above. *See Matter of Soriano*, 19 I&N Dec. at 766. The record therefore does not establish that the Petitioner has received a lesser national or internationally recognized award for excellence in her field, and she does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i).

[2] As noted by the Petitioner on appeal, the Director's decision misattributed this award to its translator, the Intercultural Mutual Assistance Association. However, because this award does not establish the Petitioner's eligibility regardless of who awarded it, the error was, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 350 n.5 (citing cases where errors that were not material to the end result were therefore considered harmless).

[3] Additionally, while the evidence provided for the first time on appeal will not be considered when determining the appeal's outcome, we note that the regulatory document regarding the Excellent Achievements in Science award does not mention third level prizes like the one the Petitioner received – only first, second, and special prizes. This raises questions about what award the Petitioner won. In any future proceedings in this matter, the Petitioner should provide objective, reliable evidence resolving this discrepancy. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[4] *See generally* 6 *USCIS Policy Manual* F.2.(B)(1), https://www.uscis.gov/policy-manual.

B. Membership in Associations in the Field of Endeavor Which Require Outstanding Achievements of Their Members, as Judged by Recognized National or International Experts. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends that her membership in the Chinese Society of Particuology (CSP) meets the criterion at 8 C.F.R. § 204.5(h)(3)(ii), and initially provided a foreign-language website printout to support this claim. The Director's NOID informed the Petitioner that under 8 C.F.R. § 103.2(b)(3), all foreign-language documents submitted to USCIS must be accompanied by a complete and certified English-language translation, but the Petitioner did not provide such a translation in response. Lacking any English-language documentation about CSP's membership requirements, the Director concluded that the Petitioner does not meet this criterion.

On appeal, the Petitioner provides an English-language printout of CSP's website for the first time, as well as supporting documentation regarding the organization's activities. As noted above, we do not consider evidence submitted for the first time on appeal where, as here, the Petitioner was previously put on notice and given an opportunity to provide that evidence. *Matter of Soriano*, 19 I&N Dec. at 766. The Petitioner has not overcome the Director's decision and established that she is a member of an association in her field which requires outstanding achievements of its members, as judged by national or international experts.

C. Original Contributions of Major Significance in the Field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner states that her co-receipt of a patent in China indicates that she has made an original contribution of major significance to her field. 8 C.F.R. § 204.5(h)(3)(v). However, as noted by the Director, the record does not include documentation showing what impact this patent had on the Petitioner's field. The support letter from J-W-, the Petitioner's graduate school supervisor, only stated that "this patent has been of important significance and utilized in the relevant science and technology companies" and provided no examples of that utilization, and no corroborating evidence was provided to support these claims.

On appeal, the Petitioner states that the patented work "has been utilized by [redacted] but provides no documentation to support this claim apart from a printout of [redacted] website homepage, which does not mention the patented technology.[5] This evidence is insufficient to establish to what extent, if any, [redacted] used the patented technology. The record therefore does not establish that this patent was majorly significant in her field.[6] The Petitioner has not shown her eligibility for the criterion at 8 C.F.R. § 204.5(h)(3)(v).

[5] We note that the website's "company news" section consists of articles from 2017 despite being printed out in 2024. It is therefore not apparent when it last updated.

[6] In her petition, the Petitioner also claimed that her citation record showed that her research constituted a major contribution to her field. The Director's decision noted that she did not provide documentation comparing her citation rate to that of others in the field. As the Petitioner did not bring this issue up on appeal, we consider it to be waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 336 n.5.

D. Performed in a Leading or Critical Role for Organizations or Establishments with Distinguished Reputations. 8 C.F.R. § 204.5(h)(3)(viii)

Finally, the Petitioner asserts that she qualifies for the criterion at 8 C.F.R. § 204.5(h)(3)(viii) through her work at the [redacted] where she has been employed since 2014. She asserts that her authorship of a research protocol and performance of related experiments "established a very good foundation" for later results. The record includes documentation of disputes between the Petitioner and her colleagues regarding the level of credit she should receive for her role in a paper that was published as a result of this research. However, this documentation does not establish the Petitioner's eligibility for this criterion because it does not show that she performed in a leading or critical role for the [redacted] as an organization.

For example, the support letter from Professor D-K-, the Petitioner's [redacted] supervisor during the relevant period, only states that the Petitioner was a capable and diligent employee, and does not indicate that she either led research in his lab or played an especially important part in it. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (noting that employer letters can help show eligibility for this criterion "so long as the letters contain detailed and probative information that specifically addresses how the person's role for the organization, establishment, division, or department was leading or critical"). The email exchanges between the Petitioner and her colleagues regarding the relevant work also indicate that her authorship of the research protocol was not considered leading or critical by those colleagues, and that the relevant paper was drafted in its entirety by someone else.

We acknowledge the Petitioner's statements regarding why she believes she played a leading and critical role in the disputed research paper. However, the criterion requires a showing that she played a leading or critical role for an establishment or organization. The record does not document the significance of the relevant paper to the overall outcome of the [redacted] activities, and so does not establish that the Petitioner's contributions were critical to that organization. Additionally, given that the lab she worked in was led by her supervisor, the record also does not indicate that her role for the [redacted] was a leading one. Therefore, the Petitioner has not established that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

III. CONCLUSION

Because the Petitioner does not have a one-time achievement under 8 C.F.R. § 204.5(h)(3) and has not provided evidence meeting at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we need not conduct a final merits analysis under *Kazarian* and hereby reserve that issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The petition will remain denied.

ORDER: The appeal is dismissed.